

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:03cv142**

**ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,**

Plaintiff,

Vs.

**RIVENDELL WOODS, INC. d/b/a
RIVENDELL WOODS and RIVENDELL
WOODS FAMILY CARE; LANDRAW-I, LLC;
ANDREA WELLS JAMES, individually; and
RODNEY JAMES, individually,**

Defendants.

ORDER

THIS MATTER is before the court on plaintiff's Motion to Compel Discovery Responses (#39) and supporting Memorandum in Support of Motion to Compel Discovery Responses (#40). Such pleadings were filed with this court on December 27, 2005, eight days after the court-imposed deadline. See Docket Entry # 37. On December 30, 2005, defendants pointed out that plaintiff's motion and memorandum were late, Docket Entry # 41, and that such late filing left defendants but two days within which to respond. Id., at 1-2. Despite the passage of more than three weeks since such error was noted, plaintiff has failed to make a showing of "excusable neglect" as required by Rule 6(b), Federal Rules of Civil Procedure. Plaintiff's motion will, therefore, be summarily stricken as filed in violation of this court's December 9, 2005, Order. Docket Entry #37. Even if such motion was timely, it appears that defendants have adequately shown that they have thoroughly and completely answered the outstanding discovery requests and that there is nothing to compel. Defendants shall be awarded their costs in defending against such motion at the conclusion of trial.

Finally, it appears that the controversy at the center of the Motion to Compel concerns purported changes to defendants' business operations in relationship to "supervisors in

charge.” The discovery deadline is May 15, 2006, and plaintiff has plenty of time to propound interrogatories, serve requests for production of document, notice depositions, and engage discovery from third-parties that may well be relevant to such an inquiry.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff’s Motion to Compel Discovery Responses (#39) and supporting Memorandum in Support of Motion to Compel Discovery Responses (#40) are **STRICKEN** as untimely.

Signed: January 23, 2006

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Dennis L. Howell
United States Magistrate Judge

